

IBN ḤAZM ON HOMOSEXUALITY. A CASE-STUDY OF ZĀHIRĪ LEGAL METHODOLOGY ¹

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Introduction

This article forms part of an ongoing investigation into the legal thought of the famous 5th/11th century scholar Abū Muḥammad ‘Alī Ibn Ḥazm of Cordoba.² As is well known, Ibn Ḥazm stood out in al-Andalus as one of the few scholars who openly challenged the supremacy of the *fuqahā*’ of the Mālikī school, who had enjoyed a virtual monopoly in matters religious and legal since the 3rd/9th century. Trained as a Mālikī himself, Ibn Ḥazm briefly adhered to Shāfi‘ism before finally opting for the Zāhirī, or literalist, school of law.³ Both in his writings and in his public lectures, he attacked the Mālikīs’ reliance on *ra’y* and their failure to base their legal decisions on the revealed sources: Koran and *ḥadīth*. Modern scholarship has mostly focused on this aspect of Ibn Ḥazm’s legal methodology,⁴ whereas the

¹ A first version of this paper was presented at a symposium on “Aspects of Islamic Law in the Pre-Modern Period”, held in January 2000 at the Institute for Advanced Studies at the Hebrew University of Jerusalem within the framework of a project on “Law and the State in Islam”. I thank the convenors, Professor Yohanan Friedmann and Dr. Nurit Tsafrir, as well as the participants in the colloquium. My special thanks go to Dr. Ella Almagor, who acted as discussant, for her insightful comments.

² Provisional title of the monograph in preparation: *The Legal Methodology of Ibn Ḥazm of Cordoba*. On Ibn Ḥazm, see Arnaldez, R., “Ibn Ḥazm”, *EF*, III, 790-799; Asín Palacios, M., *Abenḥázam de Córdoba y su historia crítica de las ideas religiosas*, vol. I. Madrid, 1927; García Gómez, E. (transl.), *El collar de la paloma. Tratado sobre el amor y los amantes de Ibn Hazm de Córdoba, con un prólogo de José Ortega y Gasset*. Madrid, 1971, 1987, 29-71; Chejne, A. G., *Ibn Hazm*. Chicago, 1982; Abū Zahra, M., *Ibn Ḥazm. Hayātu-hu wa-‘aṣru-hu, wa-āra’u-hu wa-fiḥu-hu*. Cairo, n.d.

³ See my article “From Mālikism to Shāfi‘ism to Zāhirism: the “conversions” of Ibn Ḥazm”, in García-Arenal, M. (ed.), *Conversions islamiques. Identités religieuses en Islam méditerranéen*. Paris, 2001, 73-87.

⁴ Aspects of Ibn Ḥazm’s *Uṣūl* are studied in Goldziher, I., *The Zāhirīs. Their doctrine and their history. A contribution to the history of Islamic theology*. Translated and

peculiarities in the realm of *furūʿ*, i.e., the concrete legal decisions, have so far received much less attention. In what follows, we shall examine Ibn Ḥazm's views on homosexuality, both male and female,⁵ as a case-study of a Zāhirī view that radically differed from the generally accepted view among the Mālikīs. It is hoped that this case-study, in combination with a number of others, will enable us to assess to what extent Ibn Ḥazm's views constituted, or were perceived as, a threat to the Mālikī religious establishment in al-Andalus.⁶ However, before addressing the issue in hand, I shall give a brief survey of the attitudes towards homosexuality that are reflected in the Koran, *hadīth*, and non-Zāhirī works of *fiqh*.⁷

edited by Wolfgang Behn. Leiden, 1971; Arnaldez, R., "Aḥbār et awāmir chez Ibn Ḥazm de Cordoue," *Arabica* 2 (1955), 211-227; *id.*, "La place du Coran dans les *Uṣūl al-Fiqh* d'après le *Muḥallā* d'Ibn Ḥazm", *Studia Islamica* 32 (1970), 21-30; Turki, A. M., *Polémiques entre Ibn Ḥazm et Bāḡī sur les principes de la loi musulmane. Essai sur le littéralisme zahirite et la finalité malikite*. Algiers, 1976; *id.*, "Notes sur l'évolution du zāhirisme d'Ibn Ḥazm (456/1063) du *Taqrīb* à l'*Iḥkām*", *Studia Islamica* 59 (1984), 175-185; al-Zuʿbī, A. Kh., *Zāhiriyyat Ibn Ḥazm al-Andalusī. Naẓariyyat al-maʿrifat wa-manāḥij al-baḥṭh*, Amman, 1417/1996.

⁵ It should be emphasized that the legal sources are strictly concerned with a very limited repertoire of sexual acts, not with propensities, identities, or lifestyle. Hence, the term homosexuality in this paper stands for sexual acts between two members of the same gender. See Rowson, E.K., "The Categorization of Gender and Sexual Irregularity in Medieval Arabic Vice Lists", in Epstein, J. and K. Straub (eds.), *Body Guards. The cultural politics of gender ambiguity*. New York, London, 50-79 at p. 59.

⁶ That Ibn Ḥazm's views were indeed perceived by the Mālikīs as a threat is clear from a number of contemporary accounts, such as the text printed in Asín Palacios's *Abenḥāzam*, I, 136f. about his expulsion, together with his master Ibn Muflit, from the great mosque in Cordoba, where they taught Zāhirism to a sizeable crowd.

⁷ There is not, as yet, a satisfactory comprehensive study of Islamic attitudes towards homosexuality. Everett K. Rowson announces the publication of his monograph *Homosexuality in Traditional Islamic Culture* (forthcoming from Columbia University Press), which will hopefully fill this lacuna. In the meantime, see the lemmata "Siḥāq" (G. H. A. Juynboll) and "Liwāt" (ed.) in *EP*. The latter lemma is reprinted in Schmitt, A. and Sofer, J. (eds.), *Sexuality and Eroticism among Males in Moslem Societies*. New York, London, etc., 1992, pp. 151-167. Here, the author is identified as Charles Pellat. Schmitt has taken the liberty of deleting the part about sexual contacts between women, stating that it is scandalous that an article which is said to deal with *liwāt* in fact discusses homosexuality. *Siḥāq* is discussed in detail in an unpublished MA thesis by M. Leemans, *Siḥāq en sekse. Lesbische seksualiteit in middeleeuws Arabische literatuur* (University of Utrecht, 1995). Some basic works about sexuality in the Muslim world contain scattered references to homosexuality, e.g. Bouhdiba, A., *Sexuality in Islam*. London, 1998; Bousquet, G.-H., *L'éthique sexuelle de l'Islam*. Paris, 1966. For a recent work by a Muslim writer (presumably a Shīʿite) condemning homosexuality and lesbianism, see al-ʿAdnānī, Kh., *Al-Zinā wa'l-shudhūd fī'l-ta'rīkh al-ʿArabī*. London, Beirut, 1999. AIDS is discussed here as an ancient disease, a punishment that first befell the people of

The Koran on homosexuality

The most commonly used term for homosexual contacts between men in Arabic is *fīʿl* (or *ʿamal*) *qawm Lūṭ* ("the act of the people of Lot"), from which is derived the substantive *liwāṭ*. The man who indulges in such acts is called *lūṭī*.⁸ These terms derive from the Koran, which contains various accounts of the destruction of the people of Lot (i.e., the people to whom Lot was sent as a warner),⁹ a story well known from the book of Genesis where the fellow-townsmen of Lot are stoned because of their deviant sexual practices.¹⁰ The same divine punishment is meted out to them in the Koranic account, which set the tone for future discussions of the punishment for homosexual acts, with most legal scholars considering execution by stoning (*al-rajm*) the appropriate sentence (a) because this was the way in which the people of Lot met their end, and (b) because *liwāṭ* was assimilated to *zinā*: fornication between a man and a woman who is neither his lawfully wedded wife, nor a slave owned by him; the punishment prescribed for *zinā* is stoning.

The Koran contains no explicit reference to sexual contacts between women—although Q. 4:15 has been interpreted by some as a ref-

Lot, thereafter the slaves of Pharaonic Egypt, and much later the soldiers of Napoleon's army who turned to sodomy during their long siege of Acre, having no women at their disposal. A wealth of literature reflecting western ideas about homosexuality in the Muslim world is referred to in Schmidtke, S., "Die westliche Konstruktion Marokkos als Landschaft freier Homoerotik", *Die Welt des Islams* 40 (2000), 375-411.

⁸ The present article will deal only with what is sometimes called *al-liwāṭ al-akbar* (translated by James T. Monroe as "grand sodomy") which takes place between two males, as opposed to *al-liwāṭ al-aṣghar* ("petty sodomy"): anal intercourse with a woman. See Monroe, "The Striptease That Was Blamed on Abū Bakr's Naughty Son: Was Father Being Shamed, or Was the Poet Having Fun? (Ibn Quzmān's Zajal no. 133)", in Wright Jr., J.W., and E. K. Rowson (eds.), *Homoeroticism in Classical Arabic Literature*. New York, 1997, 94-139 at p. 116. For a review of this book, see Schmidtke, S., "Homoeroticism and Homosexuality in Islam: a Review Article," in *BSOAS* 62 (1999), 260-266.

⁹ See Koran, *sūras* 7:80-84; 11:74-81; 26:160-75; 27:54-58; 29:28-34, and, less explicit, *sūras* 15:59-77, 37:133-138, and 54:33-39. In his recent book *Islam en homoseksualiteit* (Amsterdam, Utrecht, 2001), O. Nahas proposes a different, almost *Zāhirī*, interpretation of the Koranic passages dealing with the people of Lot: they were destroyed not because they were homosexuals, but for a combination of sins such as bestiality, paedophilia and rape. According to Nahas, the Koranic verses do not deal with loving same-sex couples whose relationships are based on mutual respect and equality.

¹⁰ Gen. 19 and 20.

erence to such contacts.¹¹ The situation is different in the second revealed source of Islam, the *ḥadīth*.

Homosexuality in the *ḥadīth*

The *ḥadīth* literature fully confirms the negative attitude towards homosexual acts between men that was already encountered in the Koran.¹² In the collection of al-Tirmidhī, for example, we find the following saying attributed to the Prophet: “The thing I fear most for my community is the act of the people of Lot”.¹³ Homosexuality is usually discussed in the chapters on *ḥudūd* (sing. *ḥadd*): the punishments which are clearly defined in the Koran and the *ḥadīth* and are therefore not subject to the *qāḍī*’s discretion. *Ḥadd* punishments, which vary from flogging to stoning, are imposed for the following offenses: theft, highway robbery, drinking wine, apostasy, slanderous accusation of *zinā*, and *zinā* itself.¹⁴ Homosexuality, as we shall see, is often considered a form of *zinā*, and as such incurs the corresponding *ḥadd* punishment: stoning (*rajm*) for the *muḥṣan*, that is: any free Muslim who is married, and flogging for the non-*muḥṣan*, i.e., a slave or a free, single Muslim.

The canonical collections are not very explicit about sexual acts between women, for which the terms *saḥq*, *siḥāq*, and *musāḥaqa* are used,¹⁵ although there are traditions which condemn women expos-

¹¹ See Juynboll, “Siḥāk”, pp. 565f.

¹² For a series of negative traditions about homosexual acts, both between men and between women, see Ibn al-Jawzī, *Dhamm al-hawā* (ed. Muṣṭafā ‘Abd al-Wāḥid. Cairo, 1381/1962), 197-209. Muḥammad b. Aḥmad b. Sālīm al-Safārīnī’s *Qar’ al-siyāt fī qam’ ahl al-liwāt* (ed. Rāshid b. ‘Amir al-Ghufaylī. Riyad, 1412) exclusively contains traditions concerning *liwāt*. I have not seen Abū Bakr Muḥammad b. al-Ḥusayn al-Ajurrī’s *Dhamm al-liwāt*.

¹³ Al-Tirmidhī, *Al-Jāmi’ al-Ṣaḥīḥ* (ed. Ibrāhīm ‘Aṭwah ‘Awaḍ, 5 vols. Cairo, 1382/1962), *Ḥudūd*, no. 1457. See Wensinck, A.J., *A Handbook of early Muhammedan Tradition, alphabetically arranged*, Leiden, 1961 (repr.), s.v. “Punishment”, p. 200, for further references.

¹⁴ On the *ḥudūd*, see El-Awa, M.S., *Punishment in Islamic Law: A Comparative Study*. Indianapolis, 1993, Chapters I and II. El-Awa often refers to Ibn Ḥazm’s opinions.

¹⁵ On the etymology of the term, which literally means “rubbing” or “grinding”, see Juynboll, “Siḥāk”, 565. Juynboll mentions that although strictly speaking it refers to a sexual act, the term is commonly used to indicate lesbianism, which is a propensity. Rowson consistently uses the terms “tribadism” and “tribade” rather than “lesbianism” or

ing themselves to the gaze and touch of other women. The most telling traditions, however, can be encountered in a number of pre-canonical collections.¹⁶ Thus in a tradition reported by ʿAbd al-Razzāq and going back to ʿAbd Allāh b. Kaʿb b. Mālik, “The Messenger of God cursed the *rākiba* and the *markūba*”.¹⁷

Homosexuality in legal writings

We see, then, that both the Koran and the *ḥadīth* adopt a very negative stand towards homosexuality between men and, though to a lesser extent, to sexual contacts between women. It is not surprising, therefore, that most of the legal literature also reflects a negative attitude, although different opinions exist among the *madhāhib*, and within these *madhāhib*, among their respective representatives. This is due in part to the different approaches adopted by the various schools to the revealed sources. Broadly speaking, we may say that according to the Mālikīs and the Ḥanbalīs, the required punishment for homosexual acts between men is stoning;¹⁸ the Shāfiʿīs hold that the punishment is identical to that for *zinā*, meaning that a distinction should be made between someone who is *muḥṣan* and someone who is not. The Ḥanafīs, on the other hand, are of the opinion that mere *taʿzīr* should be applied: a discretionary penalty whose aim is to punish and reform the criminal and to deter the public.¹⁹ As we shall see, this latter view is shared by the Zāhirīs. Whereas most compendia of

“lesbian”, since their connotations correspond exactly with those of the Arabic terms; see “Categorization of Gender,” p. 77, n.36.

¹⁶ See Juynboll, “Siḥāḳ”, p. 566.

¹⁷ ʿAbd al-Razzāq al-Ṣanʿānī, *Al-Muṣannaf* (ed. Ḥabīb al-Rahmān al-Aʿzamī, 11 vols. Beirut, Johannesburg, etc., 1390/1970), Bāb al-saḥāqa, no. 13383 (and see also no. 13384); see also Ibn Abī Shayba, *Kitāb al-Muṣannaf fī l-aḥādīth wa l-āthār* (ed. Mukhtār Aḥmad al-Nadwī, 15 vols. Bombay, 1401/1981), Ḥudūd, no. 9063, no. 9064.

¹⁸ Rowson, in his “Categorization of Gender”, p. 76 n.23, states that “An apparent exception among some scholars of the Mālikī school, who are said to have permitted *liwāṭ* with one’s own male slaves, has been noted occasionally in the secondary literature, but not yet systematically investigated. Such legal arguments would probably rest on analogy to female concubinage—there being no comparable analogy to heterosexual marriage”.

¹⁹ See Ibn ʿAbd al-Barr, *Al-Istidhkār* (ed. ʿAbd al-Muʿtī Amīn al-Qalʿajī. 30 vols. Damascus, Beirut a.o., 1414/1993), XXIV, 78f. On *taʿzīr* punishments, see Benmelha, Gh., “Taʿzīr Crimes”, in Bassiouni, M. Ch. (ed.), *The Islamic Criminal Justice System*. London, Rome, New York, 1982, 211-225, and El-Awa, *Punishment in Islamic Law*, Ch. IV.

fiqh contain a paragraph on *liwāṭ*, *siḥāq* is not always dealt with. It was obviously taken much less seriously, presumably because no penetration by a man takes place.²⁰

Ibn Ḥazm on homosexuality – *Ṭawq al-ḥamāma*

Homosexuality is discussed by Ibn Ḥazm in several of his works. People not familiar with his legal views on the topic may yet have read his famous book on love and lovers, *Ṭawq al-ḥamāma fī l-ulfa wa'l-ullāf*, and have got the impression that Ibn Ḥazm was quite tolerant of homosexuality. Not only does he at times give glowing descriptions of handsome men he knew, the work also contains various sympathetic accounts²¹ of men smitten with members of their own sex.²² It has been suggested that Ibn Ḥazm himself was not quite immune to

²⁰ On the “phallocentricity” of discussions of sex, see Rowson, “Categorization of Gender”, *passim*, and Monroe, “The Striptease”, 119ff. The idea that homosexual contacts between women are a passing fancy, indulged in for want of better and therefore nothing to be unduly worried about seems to be shared by the Spanish scholar A. Arjona Castro who, quoting (apparently with approval) a work on female sexuality by Ramón Serrano Vives, states that “la homosexualidad en la mujer es ocasional, presentando una dirección de la libido predominantemente heterosexual. Esto es ahora así y es probable que en aquellos tiempos [he is referring to the Umayyad princess Wallāda] fuera igual. En la mujer es raro una homosexualidad total, excepto en el caso de malformaciones genitales. Tanto ayer como hoy, algunas mujeres solteras, en aquella época por falta de hombres y la abundancia de concubinas, realizarían actos lesbianos con compañeras del serallo o amigas de sociedad, pero en todo caso como siempre se mantenían la supremacía de la dirección heterosexual”; see *La sexualidad en la España musulmana*. 2nd ed., Córdoba, 1990, p. 21.

²¹ Ella Almagor points out that Ibn Ḥazm’s sympathy is reserved for men who are enamoured of men who are their peers, socially and intellectually, and that he is much less tolerant of men whose passions are directed at men, or boys, of a lower social class.

²² See *Ṭawq al-ḥamāma*, pp. 79f., 84f., 184f.; pp. 84, 90, 220 in the translation by A. J. Arberry, *The Ring of the Dove*. London, 1953. These references are only to passages in which the beloved is clearly identified as a man; there may actually be more incidences of same-sex love in the *Ṭawq*; see the following comments of L. A. Giffen (“Ibn Ḥazm and the *Ṭawq al-ḥamāma*”, in Jayyusi, S. Kh. (ed.), *The Legacy of Muslim Spain*. Leiden, 1992, 420-442 at p. 433): “It is difficult in some passages to know whether [Ibn Ḥazm] refers to a male or a female beloved due to the language used there, either inclusive or ambiguous. Complicating the choice of interpretation is the knowledge that some poets referred to the female beloved with a masculine pronoun. Translators have often taken ambiguous or masculine referents in Ibn Ḥazm for females and so rendered them in the European language. In doing so they may have been compelled to make an arbitrary choice where there was no clue in the context”. I propose to discuss the anecdotes on homoerotic attraction from *Ṭawq al-ḥamāma* elsewhere.

the charms of other men. Thus Louis Crompton, in his recent article “Male Love and Islamic Law in Islamic Spain” states that “Ibn Ḥazm admits to being tempted by the beauty of men. On one occasion he dared not attend a party where he would meet a handsome man who attracted him, in order to avoid any occasion for sin”.²³ Arjona Castro goes further and calls Ibn Ḥazm a true, congenital homosexual, though not a practising one.²⁴ But however sympathetic Ibn Ḥazm may be towards the tormented lover of boys and men, and however much he may admire the physique of certain members of his own sex, his opinion of physical contacts between two males is entirely, and unequivocally negative, as is shown by the following statement in the last chapter but one of the *Ṭawq*, which is entitled *Bāb qubḥ al-maʿshīya*, or “Of the vileness of sinning”: “As for conduct like that of the people of Lot, that is horrible and disgusting” (*ammā fi’l qawm Lūṭ fa-shanīʿ bashīʿ*).²⁵ Apparently, then, to love or to be in love is one thing, perhaps even a noble thing (provided one does not let oneself go²⁶), but to act on it is another matter altogether. It should be

²³ In Murray, S.O., and W. Roscoe (eds.), *Islamic Homosexualities. Culture. History, and Literature*. New York, London, 1997, 142-157, at p. 149. The relevant passage, inaccurately paraphrased by the author (who does not seem to have used the Arabic text) may be found in *Ṭawq al-ḥamāma*, p. 226f.; Arberry’s translation, p. 267. For a review of *Islamic Homosexualities*, see Schmidtke, “Homoeroticism and homosexuality”.

²⁴ “Hay un tanto por ciento pequeño (4%) de estos homosexuales congénitos, que no pueden tener, ni las tienen, relaciones sexuales con la mujer. Incluso dentro de los homosexuales congénitos, algunos no tienen genitalizada su homosexualidad manteniendo sólo su personalidad homófila. Un caso típico de homosexualidad congénita es el del polígrafo cordobés Ibn Hazm (...)”; see *La sexualidad en la España musulmana*, 33f. In a later publication, however, Arjona Castro defines Ibn Ḥazm’s homosexuality as belonging to another type: as *una homosexualidad “ocasional”*. “Son homosexuales bisexuales, cuyo instinto está de ordinario dirigido al otro sexo y sólo de cuando en cuando buscan trato homosexual”. He adds that Ibn Ḥazm probably overcame this tendency; see “La infancia y la sexualidad de Ibn Ḥazm”, in *Al-Andalus Magreb III* (1995), 143-150 at pp. 149f.

²⁵ *Ṭawq al-ḥamāma*, p. 218; *The Ring of the Dove*, p. 258.

²⁶ Ibn Ḥazm is critical of a promising young scholar from Cordoba whose obsessive love for the singularly handsome Aslam was his undoing. The *Ṭawq* (pp. 184f.) contains only a brief reference to this episode, but a much more detailed version quoted on the authority of Ibn Ḥazm may be found in al-Ḥumaydī’s *Jadhwat al-muqtabis* (ed. Ibrāhīm al-Abyārī. 2 vols. Beirut, Cairo, 1410/1989), I, 222-226. Whereas in the shorter version Aslam is apparently unaware of the strength of his friend’s passion for him, and is sad to hear of his death, the longer version shows Aslam as being profoundly embarrassed by his admirer’s obsessive attention; he even refuses to visit him on his death bed although one look at him would have saved the unhappy man. The name of the suffering lover is given as Ibn Quzmān in the *Ṭawq*, and as Ibn Kulayb in *Jadhwat al-muqtabis*. P.S. van

added immediately, however, that Ibn Ḥazm applied the same strict standards to heterosexual lovers, and that he advocates chastity and continence instead of succumbing to temptation. The only lawful form of intercourse for a man is within wedlock, or with a slave-woman he owns. For a woman, only intercourse with her husband is lawful.

Interestingly enough, Ibn Ḥazm's *Ṭawq*, which deals with virtually all aspects of the phenomenon of love, does not explicitly mention love between women, let alone sex, unless the phrase "I once saw a woman who had bestowed her affections in ways not pleasing to God" (*kānat mawaddatuhā fī ghayr dhāt Allāh*) refers to this woman's affections for another woman.²⁷ Ibn Ḥazm greatly praises the pure quality of this woman's love, until it turned sour and she became bitter and resentful. It should be noted that this passage, too, occurs in the chapter about the vileness of sinning.

Even though *Ṭawq al-ḥamāma* may already have been written after Ibn Ḥazm's turn from Mālikism—via Shāfi'ism—to Zāhirism, this is not completely certain and further research is necessary in order to confirm this.²⁸ We should therefore turn to his *Kitāb al-Muḥallā bi'l-āthār*, the most comprehensive surviving work of Zāhirī *fiqh*, for a fully-developed Zāhirī opinion on the issue of homosexuality.²⁹ Be-

Koningsveld believes that this is one of the cases in which the original manuscript of *Ṭawq al-ḥamāma* has fallen victim to the copyist's ill-advised interference with the text; see his "De oorspronkelijke versie van Ibn Ḥazm's *Ṭawq al-ḥamāma*", *Sharḥiyyāt* 5 (1993), 23-38 at pp. 28-31. See also Almagor, E., "A Fragment of the Whole: Reflections in the Wake of the Translation of Ibn Ḥazm's *Ṭawq al-ḥamāma* into Hebrew", in N. Ilan et al. (eds.), *The Intertwined Worlds of Islam. Essays in Memory of Hava Lazarus-Yafeh*. Jerusalem, 2002, 59-88 at pp. 75-80.

²⁷ *Ṭawq al-ḥamāma*, p. 209f.; *The Ring of the Dove*, p. 248f. It is taken as a reference to lesbian love by Crompton, "Male Love", p. 150, whereas Giffen states that "homosexual attachments between women are not a subject of discussion"; see "Ibn Ḥazm and the *Ṭawq al-ḥamāma*", pp. 433f.

²⁸ His statement about homosexuality being disgusting is followed by some references to the views of Mālik and some of his followers. He adds, however, that this is not the place to enter into a discussion of the divergence of opinions held concerning the matter. Ibn Ḥazm was apparently already well acquainted with the views of other schools, and Zāhirī opinions are explicitly referred to more than once in the *Ṭawq*. The fact that he explicitly mentions that ten lashes should be the maximum punishment for indecent kissing of another male, rather than a more severe whipping, may be indicative of Zāhirī influence.

²⁹ The work is available in two editions: *Al-Muḥallā*, ed. Aḥmad Muḥammad Shākir (11 vols. Cairo, 1351/1932, often reprinted), and *Al-Muḥallā bi'l-āthār*, ed. 'Abd al-Ghaffār al-Bundārī (12 vols. Beirut, 1408/1988).

fore we do so, however, it is essential to give a brief outline of the principles guiding Ibn Ḥazm in his search for God's law.

Ibn Ḥazm's Zāhirism

As their name indicates, the Zāhirīs advocate the literal interpretation of the revealed sources: the Koran and the Sunna of the Prophet, for God has revealed Himself "in plain Arabic speech" (Q. 26:195). Furthermore, they recognize a restricted form of *ijmāʿ*, namely that of the Prophet's Companions, as an additional source of Islamic law.³⁰ In principle, these are the only sources from which legal opinions may be derived, and other methods such as reasoning by analogy (*qiyās*), juristic preference (*istiḥsān*), personal opinion (*ra'y*), etc. may not be applied since they are too arbitrary. Reliance on the opinions of earlier masters (*taqlīd*) is not acceptable either; rather, every new case that presents itself is to be examined anew, without reverting to existing jurisprudence.³¹ Ibn Ḥazm's attitude towards homosexuality, both male and female, will be discussed here as an illustration of this system.

Kitāb al-Muḥallā

The last volume of *Kitāb al-Muḥallā* contains an extensive discussion of homosexuality.³² The context is a discussion of forbidden acts which incur a discretionary punishment (*taʿzīr*).³³ By including it in this section, rather than in that on the *ḥudūd*, Ibn Ḥazm makes it clear from the outset that in his view homosexual acts are not something

³⁰ Q. 5:3 ("This day I have perfected your religion for you") proves, according to Ibn Ḥazm, that *ijmāʿ* is limited to the contemporaries of the Prophet, for it was in his day that religion was perfected. The agreement of later generations is of no account.

³¹ Ibn Ḥazm's ideas about *Uṣūl al-fiqh* are expounded in great detail in his *Al-Iḥkām fī uṣūl al-aḥkām* (Cairo, 2 vols., n.d.), and summarized in his *Al-Nubdha al-kāfiya fī uṣūl al-aḥkām al-dīn* (ed. Abū Muṣʿab Muḥammad Saʿīd al-Badrī. Cairo, Beirut, 1412/1991). See also the opening remarks in his *Muḥallā*, and his tract *Ibtāl al-qiyās wa'l-ra'y wa'l-istiḥsān wa'l-taqlīd wa'l-ta'līl* (ed. S. al-Afghānī. Damascus, 1960; Beirut, 1969).

³² *Al-Muḥallā*, ed. Shākir, vol. XI, pp. 380-394 (*masā'il* 2299-2303); ed. al-Bundārī, XII, pp. 388-410 (*masā'il* 2303-2307).

³³ *Masā'il al-ta'zīr wa-mā lā ḥadda fī-hi*.

that incurs the maximum punishment, i.e., the death penalty or a hundred lashes, since such acts cannot be assimilated to *zinā*, as is held by most *fuqahā* of the other schools. We shall start with his discussion of homosexual acts between men.

Fi'l qawm Lūṭ

Ibn Ḥazm opens his discussion of *fi'l qawm Lūṭ* by stating that it is one of the major sins (*kabā'ir*), like the consumption of pork, blood, *mayta*, or wine; and like *zinā* and other sins. He who declares it, or any of these other things licit, is a *kāfir* and a *mushrik* whose lives and goods may be taken. It is immediately clear, then, that here, as in *Ṭawq al-ḥamāma*, he condemns homosexuality as an abomination. The discussion which follows these opening statements may be divided into three parts, or three stages in the argumentation: (1) description of the different opinions held by the legal scholars; (2) presentation of the texts on which the different views are based; and (3) refutation of the views rejected by Ibn Ḥazm, and exposition of his own opinion. They will be discussed here in that order. Rather than give a literal translation, I shall paraphrase Ibn Ḥazm's line of reasoning.

Stage One: Description of the Different Views

Ibn Ḥazm first lists the different opinions held by the *fuqahā* with regard to the appropriate punishment for homosexual acts. All in all, he sums up seven different opinions, held by seven different groups of people (*ṭā'ifas*). I present them in the order in which they are given by Ibn Ḥazm himself.

1. Both the active (*al-a'lā*) and the passive partner (*al-asfal*) are to be burned alive;
2. Both the active and the passive partner should be taken to the highest spot of the town and be thrown down from it, and are subsequently to be pelted with rocks;
3. Both of them are to be stoned, regardless of whether they are *muḥṣan* or not;
4. Both are to be executed, i.e., by the sword;

5. The passive partner is to be stoned, whether he is *muḥṣan* or not, whereas the active one should be stoned if he is *muḥṣan*, and flogged if he is not, with the same number of lashes that constitutes the *ḥadd* punishment for *zinā*; ³⁴

6. The active and passive partners are equal [meaning that they are equally guilty or responsible; their punishment depends not on their position in the act, but on their legal status; whoever of them is *muḥṣan* will be stoned; whoever of them is not will be given a hundred lashes, as in the case of the heterosexual fornicator (*zānī*)];

7. No *ḥadd* punishment is to be inflicted upon them, and they are not to be executed, but they should be given a *taʿzīr* punishment. This, as we shall see, is the view shared by Ibn Ḥazm.

Stage Two: The Proof-Texts

Ibn Ḥazm then quotes the texts upon which the different parties base their views. As for the **first** group, i.e., of those who would condemn the culprits to the stake, Ibn Ḥazm adduces a report ultimately going back to Ibn Samʿān, who had heard from someone that Khālīd b. al-Walīd was asked concerning a *muḥṣan* “who was taken the way a woman is taken”. Abū Bakr ruled that he was to be stoned, and the Companions of the Messenger of God followed this ruling. ʿAlī, however, conveyed to the Caliph his opinion that the man should be burned alive. Abū Bakr agreed, and wrote to Khālīd b. al-Walīd that the man should be burned alive. Khālīd carried out the sentence. ³⁵

After this account, Ibn Ḥazm adds several others that deal with burning as a punishment for *liwāṭ*. Thus according to Ibn Wahb, Khālīd only burned the dead body of the homosexual, i.e., after execution by the sword, the reason being that only God can burn someone in the fire as a punishment. And Ibn Ḥabīb is quoted as having

³⁴ Note the negative attitude towards the passive partner (*al-maʿfūl bi-hi*; *al-mankūh*; *al-asfal*), who has made himself available for penetration by another man. He will be sentenced to death regardless of his marital status, unlike the *fāʿil* (also referred to as *al-aʿlā* or *al-nākih*). According to Rowson, the active partner is perceived as someone whose manhood is not impaired by the fact that he has intercourse with another man, whereas the passive partner he who allows himself to be dominated and penetrated, is stigmatized; see “Categorization of Gender”, *passim*.

³⁵ The report reached Ibn Ḥazm via ʿAbd Allāh b. Rabīʿ - Ibn Mufarrij - Qāsim b. Aṣḥab - Ibn Waḍḍāḥ - Saḥnūn - Ibn Wahb - Ibn Samʿān - a man.

stated that he who burns alive a *fā'il fi'l qawm Lūt* is not committing a sin. Another report transmitted by Ibn Ḥabīb, this time with an *isnād*, again deals with Khālīd and Abū Bakr.³⁶ °Alī holds this particular sin to be unforgivable and demands that the perpetrators be burned. He says that no nation ever committed this sin, except one (the reference is, of course, to the people of Lot), and it is well known what God did to them. The Companions agree. Abū Bakr communicates the decision to Khālīd, and others after him, such as Ibn al-Zubayr (the anti-caliph), Hishām b. °Abd al-Malik (the Umayyad caliph), and the *amīr* al-Qaṣrī in °Iraq³⁷ are known to have ordered this punishment in their days, burning alive both men involved in cases of *liwāt*. Ibn Ḥazm quotes a variation on the same story, as he heard it from Ismā'īl b. Dulaym al-Ḥaḍramī, the *qāḍī* of Majorca.³⁸

Ibn Ḥazm then moves on to the **second** view, viz. that homosexuals should be thrown down from a mountain and stoned. He heard the relevant report from the son of the above-mentioned *qāḍī*, Aḥmad b. Ismā'īl b. Dulaym.³⁹ Ibn °Abbās was asked about the *ḥadd* for a *lūṭī*, and said: he should be taken up to the highest mountain of the town and be pushed off, head down, and then be pelted with stones.

The **third** group, of those who hold that the active and the passive partner should both be stoned, whether they are *muḥṣan* or not, also adduces reports in support of its view. According to the first one, which Ibn Ḥazm heard from Muḥammad b. Sa'īd b. Nabāt, °Alī stoned a homosexual.⁴⁰ Another report has Ibn °Abbās ruling that a

³⁶ The *isnād* is as follows: Ibn Ḥabīb - Muṭarrif b. °Abd Allāh b. °Abd al-°Azīz b. Abī Ḥāzim - Muḥammad b. al-Munkadir and Mūsā b. °Uqba and Ṣafwān b. Sulaym.

³⁷ Khālīd b. °Abd Allāh al-Qaṣrī, governor of Iraq and transmitter of traditions, d. ca. 120/738.

³⁸ *Isnād*: Ismā'īl b. Dulaym al-Ḥaḍramī - Muḥammad b. Aḥmad b. al-Khallāṣ - Muḥammad b. al-Qāsim b. Sha'bān - Muḥammad b. Ismā'īl b. Aslam - Muḥammad b. Dāwūd b. Abī Nājiya - Yahyā b. Bukayr - °Abd al-°Azīz b. Abī Ḥāzim - Dāwūd b. Abī Bakr - Muḥammad b. al-Munkadir - Mūsā b. °Uqba - Ṣafwān b. Sulaym. In this account, the nickname of the hapless victim is given as *al-fajjāt*, which means a woman who is wide between the thighs, the knees, or the shanks; cf. Lane, E. W., *An English-Arabic Lexicon* (8 vols., London, 1863-1893), VI, 2343. In this case the translation "wide between the buttocks" seems more appropriate.

³⁹ He had it from Muḥammad b. Aḥmad b. al-Khallāṣ - Muḥammad b. al-Qāsim b. Sha'bān - Aḥmad b. Salama b. al-Ḍaḥḥāk - Ismā'īl b. Maḥmūd b. Nu'aym - Mu'ādh - °Abd al-Raḥmān - Ḥassān b. Maṭar - Yazīd b. Maslama - Abū Naḍra - Ibn °Abbās.

⁴⁰ *Isnād*: Ibn Ḥazm - Muḥammad b. Sa'īd b. Nabāt - °Abd Allāh b. Naṣr - Qāsim b. Aṣbagh - Ibn Waḍḍāḥ - Mūsā b. Mu'āwiya - Wakī° - Ibn Abī Laylā - al-Qāsim b. al-Walīd al-Mihrānī - Yazīd b. Qays.

virgin (*al-bikr*, in this case a young man who has not previously had sexual relations) who is caught in homosexual acts (*yūjadhu ʿalāʾl-lūṭiyya*) must be stoned.⁴¹ Ibrāhīm al-Nakhaʿī is quoted as having said that if anyone deserves to be stoned twice, it is the *lūṭī*,⁴² while Rabīʿa stated that if a man takes up with a *lūṭī*, he will be stoned, and neither his being *muḥṣan* nor any other consideration will help him.

Finally, Ibn Ḥazm cites the statement of al-Zuhrī that a *lūṭī* should be stoned, whether he is *muḥṣan* or not. This view is shared by ʿAlī, Saʿīd b. al-Musayyab, Abūʾl-Zinād, and al-Ḥasan. Among the later scholars who accept al-Zuhrī's view, Ibn Ḥazm mentions al-Shāfiʿī, Mālik, al-Layth b. Saʿd, and Ishāq b. Rāhawayh.

The **fourth** view, i.e., that both partners in the crime of homosexuality should be executed by the sword, is based upon a report by Ibn ʿAbbās (for which no *isnād* is provided) to the effect that both the active and the passive partner should be killed.

Ibn Ḥazm skips the **fifth** group, and moves to the **sixth** opinion in the list given at the beginning, viz. that homosexual acts are like *zinā*: the *muḥṣan* is to be stoned, the non-*muḥṣan* is to be flogged with a hundred lashes. Several reports are cited in support of this view. In the first, ʿAṭāʾ b. Abī Rabāḥ⁴³ relates that ʿAbd Allāh b. al-Zubayr had to try seven men caught in homosexual acts. When he inquired about them, four of them turned out to be *muḥṣan*. He ordered them to be taken out of the *ḥaram*, and they were stoned to death. The three remaining ones were flogged with the number of lashes making up

⁴¹ *Isnād*: Ibn Ḥazm – Ḥumām – Ibn Mufarrij – Ibn al-Aʿrābī – al-Dabarī – ʿAbd al-Razzāq – Ibn Jurayj – ʿAbd Allāh b. ʿUthmān b. al-Khathīm – Mujāhid and Saʿīd b. al-Jubayr – Ibn ʿAbbās.

⁴² This tradition is also quoted by Ibn Abīʾl-Dunyā, *Dhamm al-malāhī* (in J. Robson, *Tracts on Listening to Music, being Dhamm al-malāhī by Ibn Abīʾl-Dunyā and Bawāriq al-ilmāʿ by Majd al-Dīn al-Tūsī al-Ghazālī*. London, 1938), 38, 60. Ibn Abīʾl-Dunyā gives the following explanation of the tradition: “He means that if it were possible for one who had been stoned to come to life after his being killed with the stones, he would be the sodomite. If he were stoned and killed by stoning, then came to life, he would deserve to be stoned another time until he was killed. That is, his sin is too great for one stoning to be enough; contrary to the fornicator (*al-zānī*), for, as punishment and purification, stoning once is enough for him, while that is not enough for the sodomite”.

⁴³ The full *isnād* is Ibn Ḥazm – Aḥmad b. Ismāʿīl b. Dulaym – Muḥammad b. Aḥmad b. al-Khallāṣ – Muḥammad b. al-Qāsim b. Shaʿbān – Aḥmad b. Salama and al-Ḍaḥḥāk – Ismāʿīl b. Muḥammad b. Nuʿaym – Muʿādh b. al-Ḥarath – ʿAbd al-Rahmān b. Qays al-Ḍabbī – al-Yamānī b. al-Mughīra – ʿAṭāʾ b. Abī Rabāḥ.

the *ḥadd* punishment for *zinā* committed by a non-*muḥṣan*. Ibn ʿAbbās and Ibn ʿUmar were with Ibn al-Zubayr at the time, and did not dispute his verdict (in other words, they gave their tacit approval).

According to al-Ḥasan al-Baṣrī, a homosexual should be stoned if he is *ṭhayyib* (i.e., sexually experienced, having been married), but if he is a virgin, he is to be flogged.

Furthermore, there are certain people, says Ibn Ḥazm, who say that the *muḥṣan* is to be stoned and the non-*muḥṣan* is to be flogged with a hundred lashes and to be exiled for a year if he is the active partner, the *fāʿil*. The passive one, the *mankūh*, however, is to be stoned, whether he is *muḥṣan* or not. This, the **fifth** view, is that of the Shāfiʿī *faqīh* Abū Jaʿfar Muḥammad b. ʿAlī b. Yūsuf, he adds.

Finally, Ibn Ḥazm provides documentation underpinning the **seventh** and last view: that there is no *ḥadd* punishment for either partner. He quotes a report about al-Ḥakam b. ʿUṭayba,⁴⁴ who says that he who commits the act of the people of Lot should be flogged, but not to the extent of a *ḥadd* punishment. This, says Ibn Ḥazm, is the view of Abū Ḥanīfa and his followers, and that of Abū Sulaymān (i.e. Dāwūd al-Iṣfahānī, the “founder” of Zāhirism), “and all of our partisans”.⁴⁵ As I mentioned earlier, it is already clear from the fact that he discusses *liwāṭ* in his chapter on *taʿzīr* and not in that on *ḥudūd*, that this is Ibn Ḥazm’s own view.

Stage Three: The Refutation

After providing the proof-texts on which the various parties base themselves, Ibn Ḥazm refutes the views cited, except, of course, that of the seventh group. It is especially in this polemical section that we can see how he applies his Zāhirī methodology to the revealed texts.

⁴⁴ *Isnād*: Ibn Ḥazm – Muḥammad b. Saʿīd b. Nabāt – ʿAbd Allāh b. Naṣr – Qāsim b. Aṣṣagh – Ibn Waḍḍāh – Mūsā b. Muʿāwiya – Wakīʿ – Sufyān al-Thawrī – Manṣūr b. al-Muʿtamir and Abū Ishāq al-Shaybānī – al-Ḥakam b. ʿUṭayba.

⁴⁵ The *Muḥallā* contains many such tantalizing references to his fellow-Zāhirīs (this is what I take the term *aṣḥābnā* to mean). It would make our task of reconstructing the history of Zāhirism a lot easier if we knew who these men were. It should be emphasized that a reference to the view of Dāwūd or other Zāhirīs does not in all cases imply that Ibn Ḥazm shares this view, as will be seen below. For further examples, see my article “*Ikhtilāf* and the Zāhirī school, with special reference to purity laws”, forthcoming in *Jerusalem Studies in Arabic and Islam*.

With regard to the **first** group, those who advocate the burning alive of the homosexual, they argue that this is in accordance with the *ijmāʿ* of the Companions, and that this consensus cannot be contradicted. If one objects that ʿAlī, Ibn ʿAbbās, Ibn al-Zubayr and Ibn ʿUmar after them supported stoning and the *ḥadd* for *zinā*, etc. (in other words, that they supported a punishment other than burning) they will say that this cannot be so, because it contradicts their *ijmāʿ*. This is all they have to say concerning this, but they have no additional evidence, and even this does not constitute proof, because the only one who transmitted it was Ibn Samʿān, who had it from a man who reported—Ibn Samʿān did not hear it himself—that Abū Bakr, etc. But all this is *munqaṭiʿ*, for none of these people knew Abū Bakr. Also, this Ibn Samʿān is a notorious liar and is described as such by Mālik. Moreover, a sound tradition has the Prophet forbidding burning at the stake as a punishment, because only the Lord of the Fire can punish with fire.

Without stopping to refute the views of the **second** and **third** groups, as one might have expected, Ibn Ḥazm skips to the opinion of the **fourth** group – possibly because of the preceding reference to execution by the sword, which is advocated as the appropriate punishment for *liwāṭ* by the fourth group. These people, says Ibn Ḥazm, base themselves on a *ḥadīth* going back to Ibn ʿAbbās, who quotes the Prophet as having said that those caught in the act of the people of Lot should be executed, both the active and the passive partner. Ibn Ḥazm quotes several similar traditions with the same content, only to reject them, saying that none of them is sound. The first *ḥadīth*, of Ibn ʿAbbās, contains a weak link, as does the second, of Abū Hurayra. The chains of the remaining reports contain flaws, and they cannot, therefore, be adduced as proof.

Now, if it is forbidden to spill the blood of a *dhimmī* and even that of a *ḥarbī* solely on the basis of such flawed reports, then how can it be allowed to spill the blood of a Muslim, be he iniquitous (*fāsiq*) or contrite (*tāʾib*)? If any of what they adduce were sound, we, too, would accept this view, and would not oppose it in anything, says Ibn Ḥazm.

Turning back now to those who subscribe to the **third** opinion, Ibn Ḥazm states: If we look at those who say that the men are both to be stoned, *muḥṣan* or not, we see that they argue that this is what God did to the people of Lot, as is said in Q. 11:82f. (“We rained upon

them stones of clay, one after the other”). They furthermore adduce the reports that were mentioned earlier, to the effect that both the active and the passive partner are to be stoned, *muḥṣan* or not.

Ibn Ḥazm objects that there is no proof in what they say. As for what God did to the people of Lot, it is not as they see it, for other texts from the Koran (such as Q. 26:181f., 189 and Q. 11:84, 94) make it clear that the people of Lot were punished not for their abomination alone, but also for their unbelief (*kufīr*). Therefore, they cannot stone a homosexual unless he is also a *kāfīr*. If the people who try them act otherwise, they go against God’s judgement and against the Koranic verse that they cite as proof, since they deviate from the legal ruling it contains. God also says that Lot’s wife shared in their punishment, and anyone endowed with a bit of reason knows that she did not commit the “act of the people of Lot”. Therefore, it is clear and beyond any doubt that the punishment described in the Koran is not for this act alone. If they object that she, Lot’s wife, aided and abetted in their commission of the crime, they must stone everyone who enables this vice by acting as go-between or by pandering. If they do not, they contradict themselves and invalidate their proof based on the Koran, disobeying it.

The Koran also relates that Lot’s fellow-townsmen accosted his guests, whereupon God blinded their eyes. Therefore, they should also blind the eyes of homosexuals, for God did not simply stone them, but blinded and then stoned them. If they fail to do this, they go against God’s judgement concerning homosexuals and invalidate their proof. Also, they must blind the eyes of anyone who accosts another.

Moreover, they should burn alive anyone who tampers with weights and measures, for God burned the people of Shu‘ayb for that crime (see Q. 26:181f., 189; 11:84, 94). Likewise, they should execute anyone who wounds another person’s she-camel, for God destroyed the people of Ṣāliḥ when they hamstrung the she-camel (cf. Q. 91:11-14). After all, there is no difference between God’s punishing the people of Lot on the one hand—by destroying their eyesight and stoning them because of their abomination—and His burning the people of Shu‘ayb for tampering with weights and measures, or His destruction of the people of Ṣāliḥ for wounding the she-camel on the other.

After this lengthy refutation (which, it should be emphasized, attacks the prevailing Mālikī opinion ⁴⁶) Ibn Ḥazm turns to the **last** view, the one espoused by him. According to this view, homosexuality is not punishable by *ḥadd*. As proof, the people who subscribe to this view use the Koranic verses Q. 25:68f. They add a prophetic tradition to the effect that a Muslim's blood may be shed for three things only: apostasy, *zinā* by a *muḥṣan*, and homicide.

God has forbidden every man, Muslim and *dhimmī* alike, to kill unless it is justified, and there is no justification but in a revealed text (*naṣṣ*) or in *ijmāʿ*. The Prophet forbade taking a life except in the cases of *zinā* after *iḥṣān*, unbelief after belief, pandering, a third *ḥadd* conviction for drinking, and highway robbery (*ḥirāba*), unless the robber repents. The case of the homosexual is not mentioned among them, so it is forbidden to shed his blood, except if there is a text or an *ijmāʿ* including him in the categories of people who may be killed.

Ibn Ḥazm states that in his view, none of the reports concerning the killing of the homosexual is sound. Moreover, none of the things reported about any of the Companions is valid; the accounts about Abū Bakr, ʿAlī and the Companions are *munqaṭiʿa*. One of them is from the notoriously unreliable Ibn Samʿān on the authority of an unknown man (*majhūl*); the other is from someone on whose accounts one cannot rely. As for the reports going back to Ibn ʿAbbās, they have been transmitted to all kinds of unknown people, and the same is true for the *riwāya* concerning Ibn al-Zubayr and Ibn ʿUmar. One cannot, therefore, rely on the traditions adduced from the Companions with regard to this issue. By contrast, the opinion that there is no *ḥadd* punishment for the homosexual is reported from al-Ḥakam b. ʿUṭayba, who is a well-known and well-connected authority. ⁴⁷

It follows, then, says Ibn Ḥazm, that the homosexual should not be executed and not be submitted to a *ḥadd* punishment, for God did not make this an obligation, nor did His Messenger. The status of the homosexual is that of someone who has committed a forbidden act (*atā*

⁴⁶ See Ibn Abī Zayd al-Qayrawānī, *La Risāla ou Epître sur les éléments du dogme et de la loi de l'Islam selon le rite mālikite*. Texte arabe et traduction française – par L. Bercher. Algiers, 1968, 254f.; Ibn ʿAbd al-Barr, *Al-Istidhkār*, XXIV, 79, 84.

⁴⁷ For biographical details of al-Ḥakam and a list of the eminent people on whose authority he transmitted (e.g., Shurayḥ, Ibn Abī Laylā, al-Nakhaʿī, Saʿīd b. Jubayr, ʿIkrima, Mujāhid, ʿAtā' b. Abī Rabāḥ) see al-Dhahabī, *Siyar aʿlām al-nubalāʾ* (ed. Shuʿayb al-Arnaʿūṭ and Ḥusayn al-Asad a.o., 25 vols. Beirut, 1981-1988), V, 208-213.

munkaran), and the Messenger of God has ordered that such people be subjected to correction (*taghyīr al-munkar bi'l-yad*), in addition to a *ta'zīr* punishment the amount of which has been fixed by the Messenger of God and which is not to be exceeded. Elsewhere Ibn Ḥazm explains that *ta'zīr* should not exceed ten lashes. Furthermore, the people should be protected from the harm caused by homosexuals, namely by locking the latter up for an unspecified period of time.⁴⁸ Ibn Ḥazm apparently believed that homosexuals should (and could?) be reformed and rehabilitated, and that it was the duty of the community to do so. Unfortunately, he provides no further details about the practicalities of this rehabilitation.

He adduces various texts in support of his view. In the first one, which can be found in Bukhārī's *Ṣaḥīḥ*, Ibn ʿAbbās reports that the Prophet cursed effeminate men (*mukhannathīn*) and masculine-looking women (*mutarajjilāt*) and said, "Drag them out of their houses", and he removed so-and-so, and so-and-so,⁴⁹ (i.e., from society, by sending them to prison).

The prison sentence is based on God's saying "but help ye one another unto righteousness and pious duty. Help not one another unto sin and transgression" (Q. 5:2). Everyone knows that keeping away the people of Lot—both the active and the passive partners (*al-nākihīn wa'l-mankūhīn*)—from the people is an act of righteousness and a pious duty, and that leaving them be, i.e. by not interfering, thus in fact letting them carry on as they please, would amount to

⁴⁸ In her article "Imprisonment in Pre-Classical and Classical Islamic Law" (*Islamic Law and Society* 2 (1995), 157-173 at p. 171), Irene Schneider quotes a passage from the *Muḥallā* about the injustice of locking up a debtor, and then states: "Ibn Ḥazm criticizes imprisonment for debt because it delays satisfaction of a creditor's claims. Generally, he emphasizes that no Muslim should be prevented from moving freely on earth unless the Qur'ān and sunna impose such a constraint" (*sic*). The case we are dealing with here obviously meets that criterion.

⁴⁹ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (ed. L. Krehl and Th. W. Juynboll, 4 vols. Leiden, 1862-1908), Libās, no. 61, and Abū Dāwūd, *Sunan Abī Dāwūd* (ed. Muḥammad ʿAbd al-ʿAzīz al-Khālīdī, 3 vols. Beirut, 1416/1996), Adab, no. 4928. In fact, the text says: "and the Prophet removed so-and-so, and ʿUmar removed so-and-so". On the *mukhannathūn*, see Rowson, E.K., "The Effeminate of Early Medina", *JAOS* 111 (1991), 671-693. The way in which Ibn Ḥazm uses the terms *mukhannathūn* and *mutarajjilāt* seems to imply that these people not only adopt the attire of the opposite sex, but their sexual behaviour as well. He apparently sees a link between physical appearance and sexual preference or behaviour, although Rowson has shown that the *mukhannathūn* were often heterosexual.

helping them unto sin and transgression. Therefore, they should be made to stop.⁵⁰

Now some shameless and stupid people may have the audacity to say that refraining from killing them will encourage them in their acts. Yes, says Ibn Ḥazm sarcastically, and the fact that you do not execute every single fornicator—for, after all, some are only flogged—is tantamount to declaring *zinā* licit; and your refraining from executing every apostate—for after all, he is saved if he recants—is tantamount to condoning *kufr*, cross-worship, denouncing the Koran and the Prophet; and your refraining from killing the eater of pork, *mayta*, or blood, or the imbibor of wine leads you to allow the consumption of pork, *mayta*, blood, and wine! Their argument helps them as much as the Koranic passage which they cite: “Whosoever helps himself after he has been wronged—against them there is no way of blame” (Q. 42:41). This apparently means that in the case of homosexuality, a wrong has been committed, and acting against it is justified. However, according to Ibn Ḥazm, people should not exaggerate in their zeal to defend the religion of God, and add things that are not part of it: “God forbid that we should legislate corrupt laws, based on our personal views (*bi-ārā’i-nā*). Let us praise God for granting us our adherence to the Koran and the Sunna!” This is obviously aimed at people who want to impose harsh punishments for which they cannot adduce a scriptural basis, as is required by the *Zāhirīs*.

Intermezzo: Bestiality and Slander

Ibn Ḥazm’s discussion of *liwāt* is immediately followed by an exposition of the different opinions on men who commit bestiality (*man atā’l-bahīma*). This combination is not unusual; we find it not only in other *fiqh* works, but also in several collections of *āthār* and *ḥadīth*. The reason why it precedes the discussion of female homosexuality is probably the fact that both *liwāt* and *ityān al-bahīma* are forms of penetrative intercourse, while *siḥāq*, in the narrowest sense of the word, is not.

⁵⁰ People should help each other do the right thing and abstain from the wrong thing. Imprisonment is seen by Ibn Ḥazm as the solution. It is clear that he takes the injunction to practice *al-amr bi’l-ma’rūf wa’l-nahy ‘an al-munkar* very seriously.

The punishments for *ityān al-bahīma* advocated by different groups (which are listed by Ibn Ḥazm in his usual systematic way) range from flogging to stoning or execution by the sword. Some take the marital status of the offender into consideration, whereas others do not. There are differences of opinion also with regard to the fate of the animal that has been interfered with. Some say it has to be killed, but may not be eaten; others do not demand that it be punished in this way. Ibn Ḥazm does not express himself on the fate of the animal, but the man guilty of bestiality should be subjected to a *taʿzīr* punishment—which means that he shall be flogged with no more than ten lashes. He rejects the view of those who demand the *ḥadd* punishment, since they base themselves on *qiyās*, which is unacceptable. Also, the traditions they adduce in support of their view are weak and cannot be relied upon. Ibn Ḥazm's own view is based not upon revealed texts which explicitly prohibit the vice—in his view there are no such texts—but upon the tradition which we have already encountered, to the effect that whosoever sees someone committing a *munkar* must seek to change it. Bestiality is definitely a *munkar*, and should therefore be punished, though not by a *ḥadd* punishment.

The discussion of bestiality is followed by a paragraph on the appropriate punishment for someone who slanderously accuses someone of this vice or of homosexuality.

Some hold that the punishment for slanderous accusation (*qadhf*) of *liwāṭ* or bestiality should be equal to the *ḥadd* for unproven accusation of *zinā*, which can amount to eighty lashes. Since we know that Ibn Ḥazm does not accept the comparison between *zinā* on the one hand, and *liwāṭ* or bestiality on the other, it is not surprising to see that he advocates *taʿzīr*, and not the *ḥadd*, as punishment for calumnious charges of *liwāṭ* or bestiality.

Ibn Ḥazm then enters into a detailed refutation of what is presented as the Mālikī point of view, viz. that *liwāṭ* is indeed not *zinā*, but worse than *zinā*, and that it is therefore the harshest of the *ḥadd* punishments which should be applied. Ibn Ḥazm reiterates once more that neither in common usage, nor in the Sunna, is the term *zinā* ever applied to *liwāṭ*. He quotes a prophetic tradition in which *zinā* with one's neighbour's wife is listed as one of the worst crimes. Homosexuality is not mentioned, which invalidates the contention that *liwāṭ* is worse than *zinā*.

Following this discussion, there is a paragraph on the number of witnesses required for a conviction in cases of *liwāṭ* or *ityān al-bahīma*. Because Ibn Ḥazm does not regard these acts as forms of *zinā*, he does not require the evidence of four witnesses, as in the case of *zinā*, but only that of two. While on the one hand, then, the punishment for *liwāṭ* as defined by Ibn Ḥazm is lighter than that for *zinā*, a conviction for *liwāṭ* would presumably be easier to bring about if it were up to him, since the testimony of only two witnesses is required. It is interesting that among the ones who state that no fewer than four witnesses should testify, Ibn Ḥazm mentions “some of us”, that is, some fellow-*Zāhirīs*. This shows that there was no “party-discipline” within the *Zāhirī* school, and that Ibn Ḥazm held views which differed from those of other literalists, including Dāwūd al-Iṣfahānī himself. This is, of course, not all that surprising: we see it in other schools as well, even in those that did not as emphatically reject *taqlīd* as the *Zāhirīs*.⁵¹ Ibn Ḥazm refutes the *Zāhirīs*’ view in the same methodical way as he does the opinions of adherents to other *madhāhib*, without sparing his colleagues.

It is only after these three paragraphs that Ibn Ḥazm addresses the issue of *siḥāq*.

Homosexual acts between women

In this paragraph, as in the preceding ones, Ibn Ḥazm first gives the different views, the texts they are based upon, and a critique of the ones he disagrees with. One party, he begins, says that each of the two women involved in a homosexual relationship should be flogged with a hundred lashes. In support of this view, they adduce a report of Ibn Shihāb al-Zuhrī,⁵² who says that the ‘*ulamā*’ hold, with regard to the woman who performs *raḥḥa*⁵³ and similar things with another woman,

⁵¹ See also n. 45 above.

⁵² The full *isnād* runs as follows: Ibn Ḥazm – Ḥumām – Ibn Mufarrij – Ibn al-A‘rābī – al-Dabārī – ‘Abd al-Razzāq – Ibn Jurayj – Ibn Shihāb al-Zuhrī.

⁵³ For an explanation of this technical term, see the footnote in al-Bundārī’s edition, XII, 403. It apparently refers to women whose pubic area protrudes to such an extent that something resembling intercourse can be achieved. Al-Bundārī adds that sex between women is practiced only in totally decadent societies, or in places where no men are present, e.g. in women’s prisons. In depraved countries and cities such as London, he complains, same-sex marriages have the same legal status as heterosexual ones!

that both are to be flogged with a hundred lashes, the active (*al-fāʿila*) as well as the passive partner (*al-mafʿūl bi-hā*). The same statement is transmitted by ʿAbd al-Razzāq, who had it from Maʿmar, who had it from al-Zuhrī.

Another group is more lenient. Thus al-Ḥasan al-Baṣrī saw no harm in a woman inserting something into her vagina, if she does it in order to protect herself from the desire to commit *zinā*. Al-Ḥasan apparently sees no need for any punishment. However, he seems to be talking about autoeroticism, which is also covered by the term *siḥāq*.⁵⁴ A last group says that *saḥq* is forbidden (*ḥarām*), but that the appropriate punishment is not *ḥadd*, but *taʿzīr*. Ibn Ḥazm subscribes to this view.

Ibn Ḥazm states that he examined what al-Zuhrī says, about the punishment for each of them being a hundred lashes, and found that there is no proof in it whatsoever, except if one says that just like homosexuality between men is the gravest form of *zinā*, and therefore punishable with the severest *ḥadd* for *zinā*, thus by analogy *saḥq*, which is the least serious form of *zinā*, should be punished by the most lenient of the *ḥudūd* for *zinā*, i.e., a hundred lashes.

According to Ibn Ḥazm, however, those who apply stoning for male homosexuality because they consider it graver than *zinā*, must consider *saḥq*, too, graver than *zinā*, and apply stoning, for they are both cases of genital contact (*bi'l-farj*) in a way that is never allowed. But most people are not proficient in *qiyās*, and do not understand the processes of deduction; they do not follow through what they argue, nor do they reason with any consistency, and finally, they do not stick to the revealed texts. Don't they say, "Al-Zuhrī knew the Companions and the great Successors. He only says it on their authority"? Those who consider this act forbidden do not produce any further arguments; they just accept al-Zuhrī's word, as they will do whenever his view corresponds with the opinion they have adopted.

As for us, says Ibn Ḥazm, we consider reasoning by analogy null and void. One must not follow the words of anyone except the Messenger of God. Now, neither *saḥq* nor *rafa* constitute *zinā*, and if they are not a form of *zinā*, then the *ḥadd* for *zinā* does not apply to them either. It is not for anyone to distinguish between more and less seri-

⁵⁴ See Juynboll, "Siḥāq," p. 566.

ous acts, according to his personal opinion (*ra'y*), and to classify the *ḥudūd* accordingly; this would amount to adding to the *ḥudūd* of God, and adding precepts to the religion, a thing that God has not permitted, as is clear from His words: “And whoso transgresseth God’s limits, he verily wrongeth his soul” (Q. 65:1).

Ibn Ḥazm repeats that not a single passage in the Koran contains the like of what al-Zuhrī states, and neither does any sound tradition. This being the case, there can be no *ḥadd* for *saḥq*. If they cite the tradition which has the Prophet saying “*Siḥāq* is *zinā* between two women”, this does not hold water, for it comes from Baqīyya, a weak transmitter who is in no way connected to Makhūl, nor to Wāthila—both of whom appear further down in the *isnād*. Therefore, it is *munqatīʿ*. And even if this tradition were sound, it still does not contain anything on the basis of which a *ḥadd* needs to be applied, for in a report transmitted by al-Aslamī, the Prophet defined *zinā* incurring a *ḥadd* punishment as follows: an encounter in which a man illicitly obtains from a woman what he can lawfully obtain from his wife. *Zinā*, then, is only ever between a man and a woman, and always involves a penis and a vagina.

The Prophet moreover said that the limbs commit *zinā*, and that the genitals disprove or confirm it.⁵⁵ This is of course a reference to ensuing pregnancy, which can obviously result only from contact between penis and vagina. Those who say that male homosexuals commit the gravest kind of *zinā* must accept this prophetic maxim; they themselves have no text at all that they can adduce as proof. And even if they were to find such a text, they would still be exceeding the boundaries and say improper things. All this, then, disposes of the matter.

Ibn Ḥazm then refers back to the view of al-Ḥasan, who allows a woman to insert an object into her vagina. He says: We consider it wrong, for God says “who guard their private parts (*furūj*)—save from their wives or the (slaves) that their right hands possess, for then they are not blameworthy, But whoso craveth beyond that, such are the transgressors” (Q. 23:5-7). This verse, of course, applies to men. But whereas they may have lawful intercourse with female slaves, a woman may not sleep with anyone except her husband, to whom it has been allowed in a revealed text. Her *bashara*⁵⁶ is off limits to

⁵⁵ Cf. Abū Dāwūd, *Sunan*, Nikāḥ, no. 2153.

⁵⁶ *Bashara* literally means skin, but is used here as *pars pro toto* for the whole body, and in particular the genital area.

anyone else. If she, now, gives a woman or a man who is not her husband access to her private parts, and does not guard them as required by the Koran, she allows what is forbidden and disobeys God. Other than al-Ḥasan, then, Ibn Ḥazm seems to be referring not to autoeroticism, but to a sexual encounter between two women.

In a tradition found in Muslim's *Ṣaḥīḥ*, the Prophet said: A man shall not look upon the *ʿawra* of another man, and a woman not upon those of another woman, and a man shall not join another man in one garment, and a woman shall not join another woman in one garment.⁵⁷

The Prophet forbade that a woman touch another woman who wears one garment only, for perhaps she will describe her to her husband and it will be as if he sees her.⁵⁸ Also, the Prophet cursed men who imitate women, and women who imitate men.⁵⁹

According to Ibn Ḥazm, these texts are evidently about the prohibition of a man touching a man, and a woman touching another woman, without distinction. Touching someone whom it is forbidden to touch is disobeying God, and it is equally forbidden in both cases, especially if it is the private parts that are being touched, for then it is a double sin. If a woman inserts something into her vagina other than what may lawfully be inserted there, i.e., her husband's penis or something that stops the menstrual flow,⁶⁰ she is not guarding her private parts, and if she does not guard her private parts, then her sin will be all the greater. This invalidates al-Ḥasan al-Baṣrī's view on the matter.

A woman who performs *saḥq* with another woman sins, for she commits a *munkar*, and her behaviour should be corrected. Ibn Ḥazm refers to the same tradition that he cites in his discussion of homosexual acts between men: whoever sees a *munkar* being committed must "correct it with his hands". Such a woman should be subjected by to a *taʿzīr* punishment which, as we have seen, cannot exceed ten lashes, in Ibn Ḥazm's view. Whether or not *musāḥqaṭ* should be imprisoned, like their male counterparts, is not clear.

⁵⁷ *Ṣaḥīḥ Muslim* (ed. Muḥammad Fuʿād ʿAbd al-Bāqī, 5 vols. Cairo, 1374/1955), Ḥayḍ, no. 74. Siddiqi (*Ṣaḥīḥ Muslim*, rendered into English by ʿAbdul Hamid Siddiqi, 4 vols. Lahore, 1976) translates: "under one cover".

⁵⁸ Cf. Abū Dāwūd, *Sunan*, Nikāḥ, no. 2150.

⁵⁹ See n. 49.

⁶⁰ This remark shows that already in 5th/11th century al-Andalus, women apparently used something similar to tampons.

The discussion of *saḥq* is followed, or rather interrupted, by a paragraph on masturbation. According to Ibn ʿHāzm, it is allowed (*mubāḥ*) for men and women alike, since there is no explicit prohibition of it in either the Koran or the Sunna. In fact, there are quite a few *āthār* condoning it. Ibn ʿHāzm quotes them, although he personally considers it reprehensible and a moral flaw.

The paragraph on *saḥq* closes with the issue of damages to be paid by a woman who deflowers another woman with her finger. Ibn ʿHāzm first explains the various existing opinions, along with the texts adduced in support of them. He states that no one demands the *ḥadd* punishment for this, but some argue that the woman who has caused the damage should pay *ṣadāq*, a term which usually refers to the dower which becomes a woman's due upon consummation of her marriage. Others believe that both women should be given an exemplary penalty. Ibn ʿHāzm, who has found no revealed text justifying either of these actions—least of all payment of the *ṣadāq*, which is reserved for women entering into marriage—states that the appropriate punishment is *taʿzīr*, since a *munkar* has been committed.

Conclusions

Ibn ʿHāzm states in no uncertain terms that homosexual acts between men constitute a sin, since they are expressly condemned in the Koran and the Sunna. However, his rejection of *qiyās* prevents him from assimilating *liwāṭ* to *zinā*: illicit sex between a man and a woman. The punishment prescribed by him is therefore not that which is incurred by *zinā*, viz. stoning or intensive flogging, but a milder one consisting of a maximum of ten lashes and imprisonment with the aim of bringing about the reformation of the sinner. Ibn ʿHāzm rejects those reports and traditions which proclaim that *fiʿl qawm Lūṭ* is worse than *zinā*, including certain traditions from the canonical collections.

In the same way that male homosexuality is not assimilated to illicit heterosexual contacts, so homosexual acts between women (*saḥq*, *siḥāq*) cannot be compared to them, nor can they be compared to male homosexuality. Nevertheless, *saḥq*, like *liwāṭ*, incurs a *taʿzīr* punishment of up to ten lashes. Whether women, too, will have to serve a term in prison, like the men, is not clear.

It is interesting to compare Ibn Ḥazm's views with those of his friend and colleague, Ibn ʿAbd al-Barr. This man, who was one of the leading Mālikī jurists of his time, subscribes to the view that both partners in homosexual acts should be stoned. Ibn ʿAbd al-Barr bases his views on a number of traditions that are rejected by Ibn Ḥazm as unreliable. Ibn Ḥazm, then, is more lenient than his Mālikī peer. But although it is tempting to see this attitude as evidence of a more "liberal" attitude towards homosexuality on the part of Ibn Ḥazm—who, it should be recalled, is believed by some modern authors to have had homosexual leanings himself—it is more likely that his views are the outcome of his Zāhirī methodology.

While this one case is not, of course, enough in itself to prove that Ibn Ḥazm's different approach to the revealed sources led him to conclusions which differed dramatically from those of the Mālikīs, the evidence does seem to point in that direction. This impression is confirmed by two earlier case-studies, in which I found that Ibn Ḥazm's views with regard to the mobility of women and the position of non-Muslims differed considerably from those of his Mālikī environment.⁶¹ It may be assumed, then, that Ibn Ḥazm's teachings constituted a serious challenge, even if perhaps not an immediate threat, to the Mālikī establishment of al-Andalus.

ABSTRACT

This article discusses the views of the theologian and legal scholar Ibn Ḥazm of Cordoba (d. 456/1064) on homosexuality. Although reference is made to his literary work *Ṭawq al-ḥamāma*, which is rich in anecdotes on homoerotic attraction, the article focuses on Ibn Ḥazm's multivolume legal tract *Kitāb al-Muḥallā*, a work written from a Zāhirī, or literalist perspective. A step-by-step analysis of Ibn Ḥazm's legal reasoning on homosexuality, both male (*liwāṭ*) and female (*siḥāq*) is provided, and comparisons with the views of other jurist, especially Mālikīs, are made.

Unlike his Mālikī contemporaries, Ibn Ḥazm holds that homosexuality is not to be equated with fornication (*zinā*), which incurs the death penalty. Instead, he advocates a relatively mild punishment of up to ten lashes for homosexual

⁶¹ See my *Muslim Writers on Judaism and the Hebrew Bible. From Ibn Rabban to Ibn Ḥazm*. Leiden, etc., 1996, 254f.; and "Women's Access to Public Space according to *al-Muḥallā bi-l-āthār*", in Marín, M. and Deguilhem, R. (eds.), *Writing the Feminine: Women in Arab Sources*. London, New York, 2002, 75-94.

practices, based upon his idiosyncratic interpretation of the revealed sources which is illustrated here. Although Ibn Ḥazm is believed by some modern authors to have had homosexual leanings himself, he categorically condemns sexual contacts between members of the same sex as immoral and sinful, and believes that homosexuals should be reformed.

RESUMEN

Este artículo discute las opiniones de Ibn Ḥazm de Córdoba (m. 456/1064) jurista y teólogo, acerca de la homosexualidad. Aunque se hace referencia a su obra literaria *Ṭawq al-ḥamāma*, rica en anécdotas sobre atracción homoerótica, el artículo se centra en su voluminosa obra legal zahirí *Kitāb al-Muḥallā* y analiza el razonamiento legal de Ibn Ḥazm sobre la homosexualidad tanto masculina (*liwāt*) como femenina (*siḥāq*) comparándola con la de otros juristas, en particular, malikíes.

A diferencia de sus contemporáneos malikíes, Ibn Ḥazm mantiene que la homosexualidad no debe equipararse a la fornicación (*zinā*) que incurre en la pena de muerte. Por el contrario, aboga por el relativamente suave castigo de diez latigazos por prácticas homosexuales, basado en su interpretación de las fuentes reveladas tal y como se expone en este artículo.

Aunque algunos autores modernos han insinuado que el propio Ibn Ḥazm era homosexual, él condena categóricamente las relaciones entre miembros de un mismo sexo y mantiene que los homosexuales deben reformarse.